IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

Bail Appl..No. 7189 of 2007()

(CRIME NO.338/07 OF CHALISSERRY POLICE STATION)

PETITIONER:ACCUSED:

SHAMEER, AGED 20 YEARS,
S/O.MOIDHU, KENAIAMULEKU VEETTIL,
ALIPARAMBIL, CHALISSERY P.O.

BY ADV. SMT.PRAMEELA.C.K.
SRI.B.R.MURALEEDHARAN

RESPONDENTS: COMPLAINANTS:

1. **STATE OF KERALA, REPRESENTED BY SUB INSPECTOR OF POLICE, CHALISSERY POLICE STATION, PALAKKAD, THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

2. **SUB INSPECTOR OF POLICE, CHALISSERY POLICE STATION.**

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R.BASANT, J.

B.A.No.7189 of 2007

Dated this the 27th day of November 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations of having committed offences punishable under Sections 454 and 380 I.P.C. The alleged incident took place on 26/10/2007. The F.I statement was lodged only on 9/11/2007. The crux of the allegations is that when the de facto complainant, a woman/house wife went to take her bath after leaving her gold thali outside, the petitioner, a neighbour trespassed into the house, took away the thali and ran away from the spot. The de facto complainant found the petitioner moving away from her house. She, later found that her gold ornament was missing. Enquiries were made. In these circumstances, there was some delay in filing the complaint. The complaint was eventually filed only on 9/11/2007. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The petitioner has a totally different story to advance. According to him, he as well as some other neighbours were taking objections to the immoral activities of the de facto

complainant who allegedly claimed to be a drama artist. Some henchmen of the de facto complainant had attacked the petitioner and he has suffered injuries. He has been admitted in the hospital on 26/10/2007. Apprehending that the petitioner may complaint to the police about the assault on him and on coming to know that the police are seized of the matter, totally false and vexatious allegations are being belatedly raised by the de facto complainant against the petitioner. In these circumstances, the petitioner may be granted anticipatory bail, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that while it is true that the petitioner was admitted in the hospital on 26/10/2007, he has not lodged any complaint before the police. The policemen who went to the hospital could not trace the petitioner as the petitioner had by then gone away from the hospital. The learned Public Prosecutor submits that at the moment, there is no material on which the version of the de facto complainant could be doubted or suspected. The petitioner must appear before the investigating officer and co-operate with the

investigation. He must advance his version before the investigating officer. He will have to face interrogation as the police will have to make attempts to identify the offender and to recover the lost gold ornament. At any rate, at this stage of the investigation, the petitioner may not be permitted to arm himself with an order of anticipatory bail. Such an order would seriously hamper the smooth course of investigation, submits the learned Public Prosecutor. The learned Public Prosecutor submits that even the nature of the allegations would reveal that the de facto complainant is not deliberately making a false allegation. If that be so, there is no reason why such a belated allegation should have been raised, submits the learned Public Prosecutor. I shall not embark on the controversy as to the acceptability of the allegations or the credibility of the data collected. Suffice it to say that I am persuaded to agree with the learned Public Prosecutor that there are no features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must appear before the investigating officer

or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

4. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007